

August 11, 2016
Sterling Board of Health Meeting
Butterick Building, Room 205
1 Park Street, Sterling, MA. 01564

Meeting Minutes

6:30 PM Chairman Donna Clark called the meeting to order.

Roll Call: Donna Clark, Chair - present
Gary Menin, Vice Chair - present
Allen Hoffman, Member - present
David Favreau, Health Agent - present
Elaine Heller, Admin. Asst. - present

Attendees: Dolores Rich, Roy Ellis, Brian Foley, Ryan Parkinson, Paul Belair,
John Scarsella

Gary Menin noted he was recording the proceedings as an individual and that they would be available on the cloud for those who are interested. David Favreau stated he would recorded the meeting as well.

Approve Available Minutes:

A motion to approve minutes of the July 21, 2016 meeting, as amended, was made by Allen Hoffman and seconded by Gary Menin. All were in favor and the motion carried.

Prompted by these minutes which discussed a T5 septic inspection at 99 Flanagan Hill Road – which was accomplished by LR Favreau Company, with Health Department oversight by Board members as the Alternative Agent was unavailable – Mr. Menin requested a future agenda item be set to address the legality of the Agent's attendance in such situations of apparent familial conflict.

Correspondence:

None

Health Agent Report:

Health Agent Favreau advised Board members that the court date for Commonwealth of MA vs. Mike Cove was continued until August 15, 2016.

The Board received an anonymous housing complaint regarding 104 Meetinghouse Hill Road. A Building Department representative has spoken with the homeowner about the amount of junk at the property. The owner has been advised to clean up and organize the junk on the property.

Mr. Favreau attended a MPHNN meeting on August 3, during which a financial sustainability plan was discussed. With the possibility of increased fees, David suggested all Board members attend the next meeting, which is scheduled for September 14, 2016 at 8:30 AM in the Westminster Town Hall. Mr. Menin stated that once more data is available regarding the potential increase in fees/benefits the Board (as a whole) should come to a decision regarding continuation of our membership.

Mr. Favreau noted soil testing requirements for 24 Clinton Road have been completed. A copy of the results will be provided to each Board member.

The town beach will be closing on August 17. Health Agent Favreau mentioned water testing throughout the 2016 beach season showed that the water quality had been below the state required range for bacteria.

Mr. Favreau spoke about an email he received from Town Counsel concerning how the Open Meeting Law applies to on-site inspections, referencing GL c. 30A, s. 18 which excludes from the definition of the term "meeting", an on-site inspection of a project or program, so long as the members do not deliberate. In this vein, the BOH is not required to post notice of an intended site inspection and is not required to keep minutes. It was further noted that, in general, no formal meetings can be held at job sites since they do not meet ADA access requirements.

It is the opinion of Gary Menin that BOH members should not have posted or attended a meeting for the inspection at 34 Clinton Road on June 16, 2016. Mr. Menin alleges that this action is considered trespass of private property and he questioned why the Health Agent is on site for inspections performed by the MPH representative. Mr. Hoffman noted that filing for an inspection automatically grants the BOH and its representatives the right to enter the property. Mr. Favreau cited the Title 5 Code;

“310 cmr 15.023 Approving Authority Access:

The local Approving Authority or the Department may at any reasonable time examine Facilities served by systems in order to determine compliance with 310 cmr 15.000 and any permits, approvals or orders issued under 310 cmr 15.000 or under local authority. If access to a facility is denied or restricted, the local Approving Authority or the Department may seek a warrant in order to obtain access. The filing of an application for a Disposal System Construction Permit or other approval under 310 cmr 15.000 shall constitute the applicant's consent for entry at reasonable times for these purposes.”

A signed and dated copy of the Title 5 permit application from Mr. Paul Belair, owner of 34 Clinton Road, was presented as evidence that the applicant, Mr. Paul Belair, gave permission to the “Local Approving Authority” (BOH) to access the property for this inspection. Mr. Favreau also noted that he does not attend inspections performed by the MPH representative.

Acknowledging the above citation, Mr. Menin considered it reasonable for a property owner not to expect a crowd of people to do an inspection that could be done with one BOH designee without specific prior notification.

Public Session:

Former resident Paul Belair transmitted a formal complaint regarding David Favreau's residence, alleging installation of an illegal septic system. The actual complainants were not identified and wished to remain anonymous. Mr. Menin questioned Mr. Favreau regarding this complaint. Mr. Hoffman pointed out that this matter was not on the Agenda and therefore could not be discussed. The complaint, received at the Board of Health meeting on August 11, 2016, at 7:10 PM, will be submitted to the BOH office and discussed at the September meeting of the BOH

Appointments and Agenda Items:**38 Clinton Road - Discuss Email to DEP –**

Discussion was held regarding an email sent to DEP, and Board of Selectman by BOH member Gary Menin referencing 38 Clinton Road (no other Board of Health members were included on this e-mail correspondence). Mr. Menin stated his concerns about a proposed development at that location, consisting of four proposed residences, with Gary's opinion being the site is not acceptable for sewage disposal systems due to the amount of ledge and extreme slopes and pointing out – by citing from the BOH's May 12, 2016 meeting correspondence wherein Mr. Foley indicated: "He would be watching me." – that as such he is in effect being "threatened" for doing only what DEP training had instructed him to do. Stating in the e-mail, "your attention to this matter is deeply appreciated. Gary C. Menin, Sr. Fourth Term elected Member Sterling Board of Health". Mr. Favreau noted that Mr. Menin was only a third term member and not a fourth term as Mr. Menin alluded to in his e-mail to DEP.

Member Hoffman noted Mr. Menin should copy emails such as this to the BOH office since they are public records. At this point Mr. Menin referenced a Mr. Hoffman log note (dated September 3, 2015 – see attached) found in the file for 24 Clinton Road – which documented his site visit with the Health Agent without the notification to fellow board members – observing a garden hose inserted into a pipe. This was about eight months before the breakout issue was investigated by the DEP and raised as a formal meeting agenda item. Mr. Menin considered that these sorts of communications as well should also be brought before the Board. Mr. Hoffman indicated it was brought before the Board and Mr. Menin should check the associated minutes.

Brian Foley, owner and developer of the property, stated he believes Mr. Menin is feeling slighted when he doesn't have the opportunity to participate in a Board discussion, but he has done the same thing, as his emails are not sent to the other Board members. Mr. Menin believes he represents only himself as a Board member on the emails, and does not believe he is acting as a representative of the Board.

Further in this regard, Mr. Menin noted that Mr. Hoffman (during a previous meeting – May 5, 2016) noted deep-hole tests at 38 Clinton Road were performed by a professional engineer and licensed soil evaluator. The BOH agent simply witnesses these activities.

Per Mr. Foley, one lot has been staked to date. Eight weeks of work were lost due to machinery breakdown. The Board of Health was notified and Mr. Foley asked for a continuance on the BOH order to stake the locations of proposed septic systems. Work has started again this week and should be ready for members to walk the site by October 15, if not sooner. Mr. Hoffman proposed the site be ready by October 7, before the October BOH meeting, which was accepted by Mr. Foley.

Discuss Process for New Public Water Supply -

Mr. Hoffman proposed the Board meet with the Board of Selectmen, Finance Committee and DPW in regard to this issue. Mr. Hoffman offered to draft a letter to the Board of Selectmen to call a meeting with the DPW and BOH regarding the concerns of the BOH. Mr. Menin expressed his concern that this has been an ongoing issue stretching back a number of years and perhaps we should do more than write a similar letter as done in years past towards getting definitive

action at this time – for example, the preparation of a draft warrant article for the next STM/ATM to get the effort “off the dime.”

Mr. Hoffman made a motion that a draft letter be written as noted above, with a copy of the draft to the other Board members. Mr. Menin seconded the motion. All were in favor and the motion carried.

78 Worcester Road - Lots 10 & 11 - Variance extension request to 4.6.4 Aquifer and Water Resource Protection District to allow and construct a four-bedroom septic system at each lot -
This variance request was previously granted, but the request expired as requests are valid for one year only. Mr. Gary Griffin petitioned for a six-month extension. Allen Hoffman made a motion that the 6-month extension be granted, seconded by Gary Menin. All in favor, motion carried.

Health Agent Report (continued):

Health Agent Favreau notified members that an IT Advisory Committee has been formed and their next meeting is Monday, August 15, at 6:30 PM. It is Mr. Favreau's intention to attend the meeting and give input as to what IT features the Board would find beneficial. Mr. Menin questioned why meeting minutes are not posted on the town website. Mr. Favreau and Mr. Hoffman explained the Board is lacking in administrative support, especially IT support, for getting this accomplished. Mr. Favreau noted that all hard copies of minutes are available as required. Posting on the web site is a convenience, however not required according to Massachusetts Public Record Law.

Mr. Favreau notified members an additional public records request, made by Paul Belair, is being processed.

Mr. Menin mentioned a house fire that had recently occurred on Birch Drive, which was possibly caused by an electrical box. He would like to establish the exact cause and will contact the fire department.

Adjourn:

Gary Menin made a motion to adjourn the meeting and it was seconded by Allen Hoffman. All were in favor and the meeting adjourned at 7:46 PM.